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Phil L. Hansen, Attorney General of the State of Utah v. Legal Services Committee of the Utah State Legislature : Respondent's Brief Supporting Petition For Rehearing

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**IN THE SUPREME COURT
OF THE
STATE OF UTAH**

PHIL L. HANSEN,

Plaintiff-Appellant

vs.

LEGAL SERVICES COMMITTEE
OF THE UTAH STATE LEGISLA-
TURE,

Defendant-Respondent.

Case No.
10784

RESPONDENT'S BRIEF SUPPORTING
PETITION FOR REHEARING

RELIEF SOUGHT ON PETITION
FOR REHEARING

Respondent seeks the Court's reversal of its previous opinion wherein it reversed the lower Court's decision.

ARGUMENT

POINT I.

ARTICLE 24, SECTION 12, OF UTAH CONSTITUTION DOES NOT READ AS IT IS QUOTED IN THE COURT'S WRITTEN OPINION.

Article 24, Section 12 of Utah Constitution is quoted in the Court's written opinion as reading "State Officers shall be a Governor . . . Members of the Senate and House of Representatives. . . ."

The provision reads:

"The State Officers to be voted for at the time of the adoption of this Constitution, shall be a Governor, Secretary of State, State Auditor, State Treasurer, Attorney-General, Superintendent of Public Instruction, Members of the Senate and House of Representatives, three Supreme Judges, nine District Judges, and a Representative to Congress." (Emphasis added).

The italicized portion of the above Section was deleted from the Court's quotation without any indication that it was being deleted.

POINT II.

ARTICLE 24, SECTION 12 OF UTAH CONSTITUTION DOES NOT DEFINE THE

TERM "STATE OFFICERS" TO WHOM
THE ATTORNEY-GENERAL SHALL ACT
AS LEGAL ADVISOR.

Article 24 of Utah Constitution is what might be called "transitional" that is, all of the Sections in Article 24 are written to carry the government from a territory to a state. With few exceptions, all of the Sections of this Article were to have effect only once in time and upon the happening of that single event their usefulness would come to an end.

It is strange that the Court should look to the transitional Article for a definition of the term "state officers" except, of course, this is the only Section in the entire constitution that mentions legislators as being state officers.

It is apparent from reading Section 12 of Article 24 that the framers of the constitution did not intend this Section to be definitive of the term "state officers." The deleted portion of the Court's quotation states the section's real purpose, that of providing which state officers were "... to be voted for at the time of the adoption of this Constitution"

If Section 12 is considered as definitive of the term "state officers" then what is the proper title for the other officers who are elected under Legislative provisions pursuant to Section 15 of Article 24, Utah Constitution? Article 15 provides:

“The Legislature, at its first session, shall provide for the election of all officers, whose election is not provided for elsewhere in this constitution, and fix the time for the commencement and duration of their terms.”

To rule that Section 12 defines “state officers” and also to rule that the Attorney-General is the “legal advisor” to state officers is to rule that the Attorney-General so defined, is the legal advisor to “3 Supreme Judges, nine District Judges and a Representative to Congress.”

Obviously this is not the case as the Attorney-General is not the legal advisory to the judiciary or to any member of Congress.

Also from Section 15 it appears obvious that there are state officers who shall be elected (and even appointed) who are not mentioned in Section 12, to whom the Attorney-General may or may not be the legal advisor.

It would appear logical that “the term ‘state officer,’ as used in the constitution, may vary according to the context in which it is used.” *State v. Yelle*, 329 P.2d 841.

Therefore, contrary to the Court’s opinion, the issue is not “crystal clear” and Article 24, Section 12 does not “dispose of the matter.”

POINT III.

STATE vs. YELLE, 329 P. 2d 841 (1958) IS
CONSTITUTIONALLY A SIMILAR CASE.

State v. Yelle does differ factually from the case at hand, however, no two cases are ever the same if one is looking only for differences and not for similarities. The same basic legal question is involved and so are the same basic constitutional provisions.

Article III, Section 21 of Washington Constitution provides:

“The Attorney-General shall be the legal advisor to the state officers . . .”

and is identical to the Utah Provision.

The *Yelle* case held that “state officers” for the purposes of Article III, Section 21 of Washington Constitution are only those elected state officers named in Article III, Section 1 of the Washington Constitution. That Section provides:

“The executive department shall consist of a governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, and commissioner of public lands, who shall be severally chosen by the qualified electors of the state . . .”

This provision of the Washington Constitution is the same as Article VII, Section 1 of the Utah Consti-

tution as to who shall be executive officers except the Washington section provides for "a commissioner of public lands" which is not provided for in the Utah section.

The *Yelle* case then held that the Attorney-General is the "legal advisor" only to the elected executive department officers under nearly identical constitutional provisions.

POINT IV.

DEFENDANT AND RESPONDENT DOES RELY ON OTHER THINGS THAN STATE v. YELLE AND THE PAST PRACTICE OF HIRING REFERENCE ATTORNEYS.

The District Court in its memorandum decision set forth in 18 pages, the law which it felt applicable to the case. It was felt that for Respondent to repeat what the District Court had stated in its 18-page memorandum would be presumptive. The Defendant - Respondent would, however, urge the Court to read that decision and consider the points raised there as part of its argument.

Respondent would at this point like to set forth the critical point of this case that makes it unnecessary to define state officers at all. This point is defined by the District Court when it states:

" . . . it would be sufficient to say that Senate Bill No. 4 creating the Joint Legal Services Com-

mittee provided for the establishment of 'the office of the legal advisor to the legislature', that the legislature, being the Legislative Department of our state government, is not a 'State Officer' within the meaning of Section 18 of Article VII, and that therefore the mandatory provisions of Section 18, if any, do not apply. . . ." (R. 22)

The Attorney-General is not the legal advisor to the judicial department nor is he the legal advisor to the legislative department.

The reasons are the same. They are separate departments of government. The Attorney-General is the legal advisor to the executive officers of state government — which of those officers is not a question that is now before the Court. However, not even all of the executive officers may be included in an interpretation similar to that used in the *Yelle* case is applied.

In addition to dependance upon the law stated above, the Respondent also relies upon the accepted principle of statutory interpretation that should require no citations; a statute must be held constitutional unless it clearly violates a provision of the constitution. Every doubt must be resolved in favor of its validity. A Court should hold legislative acts constitutional unless it is convinced beyond a reasonable doubt that they are unconstitutional.

POINT V.

THE LEGISLATURE IS NOT TRYING TO
EMASCULATE THE ATTORNEY-GENER-

AL'S OFFICE, BUT RATHER IS TRYING TO PROVIDE SERVICES TO THE MEMBERS OF THE LEGISLATURE THAT WILL ALLOW THEM TO MEET THE NEW AND COMPLEX PROBLEMS OF AN EXPANDED GOVERNMENT.

The problems and complexities of state government are growing at an astounding rate. One index of this growth is the amount of money spent by the three departments of government: In the first state legislature after statehood \$800,000.00, (approx.); in the 1967 legislature \$80,000,000.00 (approx.).

In the last 70 years of expansion and growth within the Judicial and Executive branches of government the Legislative Branch has changed very little. For example, a Supreme Court Justice's salary was \$3,000.00 per year and is now \$16,500.00 per year. A legislator's salary was \$300.00 per year and is now \$500.00 per year.

In 1965 the legislature appointed a study committee of outstanding private citizens to make recommendations for upgrading the legislature and making it more able to fulfill the responsibility in the process of government, and for general improvement of the legislative process. One of their many recommendations was the creation of a legal services committee with a legal advisor to act as "legal advisor to the legislature."

It was hoped that by creating such a position, the Legislature could have its bills more carefully prepared

than is ever possible in the press of a 60-day biennial session. Also Legislators would be able to have bills prepared in advance of a legislative session and such bills would be studied by other legislators in advance of the session and they could reach a more informed decision on the bill.

The creation of a Legal Advisor to the legislature would allow not only for pre-preparation of bills but also for their pre-filing. Pre-filing would allow the legislature to begin work immediately upon convening in regular session.

The other duties of the legal advisor are set out in the law creating the position of Legal Advisor, Chapter 7, Laws of the State of Utah 1966, Second Special Session, and clearly do not infringe upon any existing duty of the Attorney-General but are designed solely to aid the legislature in the performance of its responsibilities.

Of the 50 states and three territories of Guam, Puerto Rico and the Virgin Islands, 49 either have an agency known as a "counsel" or some other named agency giving them legal advice, drafting bills, etc. (R. 44).

Utah is not among the 49. Because of the wide use of such service the need for it in Utah is apparent.

The creation of the Legal Advisor to the legislature is just one of many needed changes to improve the quality of legislation that is ever increasing because of the de-

mands made upon it by the other two departments of government.

CONCLUSION

In our system of tripartite government the legislative branch should be given the right to hire its own legal advisor just as the other branches of government have such right.

Therefore, the Court should reverse its previous decision and uphold the holding of the lower court.

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